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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,157	07/02/2003	Richard J. Schuck	SCHUCK-PA-1	4128

7590 07/20/2004  
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EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 07/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/612,157

Applicant(s)

SCHUCK, RICHARD J.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8 Oct. 2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Acknowledgement is made of Applicant's IDS received 8 October 2003.

#### ***Election/Restrictions***

Applicant's election without traverse of Species I (Figs. 1-7) in the reply filed on 28 June 2004 is acknowledged. Claims 10-20 are withdrawn as drawn to non-elected species.

#### ***Specification***

The disclosure is objected to because of the following informalities:

In the "BRIEF DESCRIPTION OF THE DRAWINGS," line 12, "Fig. 2" should be --Fig. 3--.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, are rejected under 35 U.S.C. §103(a) as being unpatentable over Eve (US 2,531,562) in view of Sikorski (US 5,772,484).

As to Claim 1, Eve discloses a floating island planting system (Figs. 1-6) comprising a float ring (10 of Figs. 1 and 2) formed as a circular wall member having a first diameter; a

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garden planter (13 of Figs. 1 and 2) formed in bowl configuration with a collar (14 and 15 of Figs. 1 and 2) of greater diameter than the first diameter Fig. 1), the bowl of the garden planter being dimensioned for nesting in the float ring (Fig. 1), and the planter being defined by a plurality of holes (18 of Fig. 2; although only one hole is shown it is notoriously well known in the horticultural arts to have pots with a plurality drainage holes) through the closed bottom; and, a fill mix ("potting soil" of col. 1 line 24) residing in the planter, the fill mix comprising a combination of clay and potting soil (in that "potting soil" will inherently contain some clay). Not disclosed is the float ring a closed-cell polyethylene foam. Sikorski, however, discloses a floatation device (Fig. 1a) made of closed-cell polyethylene foam (col. 3 lines 25-28). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Eve by using the floating ring of Sikorski so as to have a ring with variable buoyancy means (Sikorski at col. 1 lines 58-64) so that the system can more easily maintain an upright posture.

As to Claim 3, Eve as modified by Sikorski further disclose the polyethylene as heat sealed (in the for the ring of Sikorski to float the polyethylene would be heat sealed).

As to Claim 4, the limitations of Claim 3 are disclosed as described above. Not disclosed is the plurality of holes being 0.25 inch diameter. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the system of Eve as modified by Sikorski by making the bottom holes 0.25 inch diameter so as to meet a particularly desired flow rate of water.

As to Claim 5, Eve as modified by Sikorski further disclose a mesh (col. 2 lines 35-37).

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Claim 2 is rejected under 35 U.S.C. §103(a) as being unpatentable over Eve (US 2,531,562) in view of Sikorski (US 5,772,484) in further view of Bardsley (US 4,219,349).

As to Claim 2, the limitations of Claim 1 are disclosed as described above. Not disclosed is the clay a calcined montmorillonite. Bardsley, however, discloses a system with calcined montmorillonite as the clay (col. 2 lines 1-2, 17-18, 27-31). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the system of Eve as modified by Sikorski by using the calcined montmorillonite as the clay as disclosed by Bardsley so as to have a potting soil with micronutrients and essentially uniform chemical and physical properties (see Bardsley at col. 1 lines 64-66).

Claims 8 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Eve (US 2,531,562) in view of Sikorski (US 5,772,484) in further view of FR 1566219.

As to Claims 8 and 9, the limitations of Claim 1 are disclosed as described above. Not disclosed is the garden planter/ring made black to protect from UV damage. FR 1566219, however, discloses adding carbon black to polyethylene or plastic (abstract written in English). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the system of Eve as modified by Sikorski by adding the stabilizer of FR 1566219, that contains carbon black, so as to stabilize the system/ring against decay caused by thermal, oxidative, or UV degradation (abstract in English).

*Allowable Subject Matter*

Claims 6 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Asher disclose in the prior art a floating garden with ring. Schuck discloses the instant Application's pre-grant publication.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner